

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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STEWART GITTENS, JR.,

**ANSWER**

Plaintiffs,

-against-

07 CV 9871 (RWS)

THE CITY OF NEW YORK, KENNETH FISCHER, and  
JOHN DOES,

Defendants.

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Defendants City of New York and Kenneth Fischer, by their attorney, Michael A. Cardozo, Corporation Counsel for the City of New York, for their answer to plaintiffs' Complaint, respectfully allege as follows:

**AS TO THE "PRELIMINARY STATEMENT"**

1. Defendants deny the allegations set forth in paragraph "1" of the Complaint, except admit that Plaintiff purports to bring this action as stated therein.

**AS TO "JURISDICTION"**

2. Defendants deny the allegations set forth in paragraph "2" of the Complaint, except admit that Plaintiff purports to invoke the Court's jurisdiction as stated therein.

3. Defendants deny the allegations set forth in paragraph "3" of the Complaint, except admit that Plaintiff purports to invoke the Court's jurisdiction as stated therein.

AS TO "JURY TRIAL DEMANDED"

4. Defendants deny the allegations set forth in paragraph "4" of the Complaint, except admit that Plaintiff demands a jury trial.

AS TO "VENUE"

5. Defendants deny the allegations set forth in paragraph "5" of the Complaint, except admit that Plaintiff purports that venue is proper.

AS TO "NOTICE OF CLAIM"

6. Defendants deny the allegations set forth in paragraph "6" of the Complaint, except admit that a document purporting to be a notice of claim was served upon the New York City Comptroller's Office on October 4, 2006.

AS TO "PARTIES"

7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the Complaint.

8. Defendants deny the allegations set forth in Paragraph "8" of the Complaint, except admit that the City of New York is a municipal corporation duly organized and operating under the laws of the State of New York and respectfully refer the Court to the appropriate enabling statute and the related laws of the State and City of New York for their content and meaning as to its responsibilities.

9. Defendants deny the allegations set forth in paragraph "9" of the Complaint, except admit that on August 17, 2006, Kenneth Fischer was employed by the City of New York.

AS TO THE "STATEMENT OF RELEVANT FACTS"

10. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "10" of the Complaint.

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "11" of the Complaint.

12. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the Complaint.

AS TO THE "FIRST CLAIM"

13. In response to the allegations set forth in paragraph "13" of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

14. Defendants deny the allegations set forth in paragraph "14" of the Complaint.

15. Defendants deny the allegations set forth in paragraph "15" of the Complaint.

AS TO THE "SECOND CLAIM"

16. In response to the allegations set forth in paragraph "16" of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

17. Defendants deny the allegations set forth in paragraph "17" of the Complaint.

18. Defendants deny the allegations set forth in paragraph "18" of the Complaint.

19. Defendants deny the allegations set forth in paragraph "19" of the Complaint.

AS TO THE "THIRD CLAIM"

20. In response to the allegations set forth in paragraph "20" of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

21. Defendants deny the allegations set forth in paragraph "21" of the Complaint.

22. Defendants the allegations set forth in paragraph "22" of the Complaint.

AS TO THE "FOURTH CLAIM"

23. In response to the allegations set forth in paragraph "23" of the Complaint, Defendants repeat and re-allege all the preceding paragraphs of their answer, as if set forth fully herein.

24. Defendants deny the allegations set forth in paragraph "24" of the Complaint.

25. Defendants deny the allegations set forth in paragraph "25", except Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth regarding bodily and psychological injuries and emotional distress.

**FIRST AFFIRMATIVE DEFENSE**

26. The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

27. Defendants have not violated any rights, privileges or immunities secured to the plaintiff under the Constitution, the laws of the United States, the laws of the State of New York

or any political subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

**THIRD AFFIRMATIVE DEFENSE**

28. Any and all injuries alleged in the complaint were caused, in whole or in part, by plaintiffs' culpable, negligent, or intervening conduct and were not the proximate result of any act of defendants.

**FOURTH AFFIRMATIVE DEFENSE**

29. The actions of any police officers involved were justified by probable cause.

**FIFTH AFFIRMATIVE DEFENSE**

30. At all times relevant to the acts alleged in the Complaint, Defendant City of New York, its agents and officials, acted reasonably in the proper and lawful exercise of their discretion. Therefore, Defendant City is entitled to governmental immunity from liability.

**SIXTH AFFIRMATIVE DEFENSE**

31. Punitive damages cannot be recovered as against the Defendant City of New York or the other Defendants and, if available, the amount of such damages is limited by applicable state and federal constitutional provisions, including due process, and other provisions of law.

**SEVENTH AFFIRMATIVE DEFENSE**

32. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion.

**EIGHTH AFFIRMATIVE DEFENSE**

33. Plaintiff's claims are barred, in part, by their failure to comply with the conditions precedent to suit including, but not limited to, New York General Municipal Law §50-e and §50-i.

**NINTH AFFIRMATIVE DEFENSE**

34. Plaintiff provoked the incidents of which they complain.

**TENTH AFFIRMATIVE DEFENSE**

35. Defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

**ELEVENTH AFFIRMATIVE DEFENSE**

36. Plaintiffs' claims are barred, in whole or in part, by their contributory or comparative negligence and by their assumption of the risk.

**TWELTH AFFIRMATIVE DEFENSE**

37. Plaintiffs' claims are barred, in whole or in part, by the doctrines of absolute immunity, waiver and estoppel.

**THIRTEENTH AFFIRMATIVE DEFENSE**

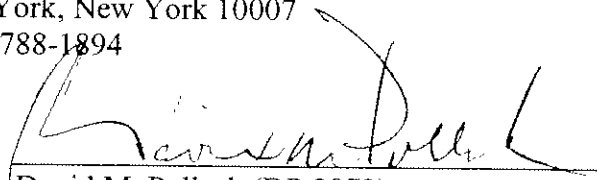
38. Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations.

**WHEREFORE**, Defendants City of New York, and Kenneth Fischer request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
February 1, 2008

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